

## **SUBCHAPTER P : WARNING SIGNS FOR CONTAMINATED AREAS**

### **§335.441. Purpose, Scope and Applicability.**

The purpose of this subchapter is to provide standards and procedures for the placement of warning signs on property contaminated with hazardous substances when such contamination presents a danger to public health and safety.

### **§335.442. Definitions.**

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicated otherwise.

Contaminated property-Property on which hazardous substances in known or potentially harmful quantities have been released, spilled, leaked, pumped, poured, emitted, entered or dumped.

Emergency-Any situation in which an immediate threat to public health and safety exists from releases or threatened releases of hazardous substances on contaminated property.

Hazardous substances-

(A) A substance designated pursuant to the Federal Water Pollution Control Act, §311(b)(2)(A), as amended (33 United States Code 1321);

(B) An element, compound, mixture, solution or substance designated pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, §102, as amended (42 United States Code 9602);

(C) A hazardous waste having the characteristics identified under or listed pursuant to the federal Solid Waste Disposal Act, §3001, as amended (42 United States Code 6921), excluding waste, the regulation of which under the federal Solid Waste Disposal Act (42 United States Code 6901 et seq.) has been suspended by Act of Congress,

(D) A toxic pollutant listed under the Federal Water Pollution Control Act, §307(a), as amended (33 United States Code 1317);

(E) A hazardous air pollutant listed under the federal Clean Air Act, §112, as amended (42 United States Code 7412); and

(F) Any imminently hazardous chemical substance or mixture with respect to which the administrator of the Environmental Protection Agency has taken action pursuant to the Toxic Substances Control Act, §7 (15 United States Code 2606).

(G) Does not include petroleum, which means crude oil or any fraction thereof that is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A)-(F) of this definition; nor does it include natural gas, natural gas liquids, liquified natural gas, or synthetic gas useable for fuel mixtures of natural gas and synthetic gas; nor does it include waste materials which result from activities associated with the exploration, development, or production of oil or gas or geothermal resources or any other substance or material regulated by the Railroad Commission of Texas pursuant to the Natural Resources Code, §91.101.

Property owner-The person or persons who own contaminated property.

Remedial action-This term shall have the same meaning as in 31 Texas Administrative Code Chapter 335, Subchapter K of this title (relating to Hazardous Waste Facilities Assessment and Remediation).

Warning sign-A sign which provides public notice that a particular property is contaminated with hazardous substances and that entry on the property presents a potential hazard to public health and safety. The sign may either be placed by the commission or made and placed in accordance with commission specifications.

Written consent form-A document signed by the property owner which states that the property owner agrees to the placement of warning signs on his property. The document shall be signed as follows:

(A) If the property owner is an individual, the written consent form shall be signed by the property owner or the property owner's approved agent. An agent shall provide written evidence of his or her authority to represent the property owner. If the property owner is an individual doing business under an assumed name, an assumed name certificate must be obtained from the county clerk of the county in which the principal place of business or the contaminated property is located.

(B) If the property is jointly owned, the written consent form shall be signed by each property owner or each property owner's duly authorized agent, with written evidence of such agency relationship to be submitted with the written consent form. If land is owned by both husband and wife, each shall sign the written consent form. If the joint owners are doing business under an assumed name, an assumed name certificate must be obtained from the county clerk of the county in which the principal place of business or the contaminated property is located.

(C) If the property is owned by a partnership, the written consent form shall be signed by one of the general partners. If the partnership is doing business under an assumed name, an assumed name certificate must be obtained from the county clerk of the county in which the principal place of business or the contaminated property is located.

(D) If the property is part of an estate or guardianship, the written consent

form shall be signed by the duly appointed guardian or representative of the estate and a current copy of any and all document(s) issued by the court appointing the guardian or the representative of the estate shall be attached to the written consent form.

(E) If the property owner is a corporation, public district, county, municipality, or other corporate entity or political subdivision, the written consent form shall be signed by a duly authorized official. Written evidence in the form of by-laws, charters, or resolutions which specify the authority of the official to take such action shall be submitted. A corporation may file a corporate affidavit as evidence of the official's authority to sign.

(F) If the signatory is acting as trustee for another person, the signatory shall sign as trustee, and in the written consent form shall disclose the nature of the trust agreement and give the name and current address of each trust beneficiary. Each signatory shall subscribe to and swear to the written consent form before a person entitled to administer oaths, who shall also sign his or her name and affix his or her seal of office to the written consent form.

#### **§335.443. Determination of Potential Hazard to Public Health.**

(a) Prior to placing warning signs on contaminated property, a determination must be made by the executive director of the Texas Water Commission that there exists a potential hazard to public health and safety which will be eliminated or reduced by placing a warning sign on the contaminated property. The executive director of the Texas Water Commission may consult with the Texas Department of Health in making this determination where appropriate. During the initial site investigation, if there is sufficient information the following factors should be considered in determining whether a potential hazard to public health and safety exists:

(1) character of the contaminant(s), based on labeling, type of container, if any, the presence of any marking or labelling indicating the contents of any container present, laboratory analyses of the contaminant(s) or media containing the contaminant(s) or other relevant factors;

(2) amount and/or suspected concentration of the contaminant(s);

(3) the known or suspected health effects of the contaminant(s);

(4) accessibility of the contaminated area to the public;

(5) route(s) of exposure;

(6) proximity of schools, hospitals, residential areas; and

(7) potential for wind dispersal or other potential pathway(s) for migration of the contaminant(s).

(b) It is presumed by the Texas Water Commission that a hazard to the public health and safety exists if, at any point during the site investigation, the following conditions are found:

- (1) illnesses are observed or alleged to be related to the contaminants present at the site;
- (2) known or suspected toxic or carcinogenic materials are detected at concentrations which could potentially affect public health and safety;
- (3) mutagenic, teratogenic, or other materials which may be detrimental to reproduction are discovered; or
- (4) hazardous substances are found in an area accessible to the public.

**§335.444. Property Owner Consents to the Placement of Warning Signs.**

Whenever possible, written consent should be obtained from the property owner of the contaminated property on which the warning signs are to be placed. The commission may place warning signs on contaminated property if prior written consent is obtained from the property owner for such placement.

**§335.445. Placement of Warning Signs without the Property Owner's Consent.**

The commission shall issue an order to authorize the placement of warning signs on contaminated property if no written consent has been obtained for such placement from the property owner. In non-emergency situations, an opportunity for a hearing on the placement of warning signs shall be afforded to the property owner in accordance with the contested case provisions of the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13A, §13 (Vernon).

**§335.446. Emergency Placement of Warning Signs.**

If an emergency exists which requires the immediate placement of warning signs on contaminated property to protect the public health and safety and the property owner has not provided written consent to the placement of warning signs, an emergency order authorizing the placement of warning signs on the contaminated property may be issued without notice and a hearing by the commission or with such notice and hearing as is practicable. If an emergency order is issued by the commission pursuant to this section, the commission shall fix a time and place for a hearing to affirm, modify or set aside the emergency order. Notice of the hearing to affirm, modify or set aside the emergency order shall be provided in accordance with the provisions set forth in 31 Texas Administrative Code Chapter 305, Subchapter B.

**§335.447. Reporting of Placement of Warning Signs.**

Any commission employee who places or requests the placement of a warning sign on contaminated property must file a report with the commission's central office in Austin within ten (10)

days of such a request or placement. The report must include the following information, if known:

- (1) the name and office telephone number of the reporting individual;
- (2) the name and telephone number of the commission personnel investigating the site;
- (3) the location of the contaminated property;
- (4) the identity of the contaminant(s);
- (5) the physical and chemical properties of the contaminant(s);
- (6) the source of the contamination;
- (7) the extent of the area impacted by the contamination;
- (8) conditions affecting the migration of the contamination including surface water runoff, release(s) to the air, releases to the groundwater, prevailing weather and/or any fire(s);
- (9) the extent of actual and potential exposure to the contamination including exposure by emergency personnel, occupational exposure, and real or potential exposure by the public, where this information is available;
- (10) a description of the procedures used or proposed to be used to determine whether warning signs are necessary and to determine the appropriate placement of the warning signs;
- (11) when and where warning signs were placed or are proposed to be placed;
- (12) whether written consent was obtained from the property owner; and
- (13) a copy of any written consent form obtained from the property owner.

**§335.448. Removal of Warning Signs.**

Warning signs shall be removed from the contaminated property upon approval of the executive director or the commission after either:

- (1) the property owner has provided the commission with documentation that remedial action on the contaminated property is complete and no further hazard to the public health and safety exists and the commission has independently verified the information provided; or
- (2) the commission has independently determined that remedial action on the contaminated property is complete and no further hazard to the public health and safety exists.